

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Spring Street Courthouse, Department 17

**BC594715**

**DIANE V SANCHEZ VS ALLIANZ LIFE INSURANCE  
COMPANY OF NORTH A**

July 8, 2022

1:52 PM

Judge: Honorable Maren Nelson  
Judicial Assistant: Maribel Mata  
Courtroom Assistant: Darla Tamayo

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

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**NATURE OF PROCEEDINGS:** Court Order re: Motion for Preliminary Approval

Order Granting Motion for Preliminary Approval of Class Action Settlement is signed and filed this date.

On Court's own motion, the Fairness Hearing set for 11/10/2022 is reset for 11/09/2022 at 10:00 AM in Department 17 at Spring Street Courthouse.

Judicial Assistant is to give notice.

Clerk's Certificate of Service By Electronic Service is attached.

FILED  
Superior Court of California  
County of Los Angeles

JUL 08 2022

SHERRI R. CARTER / EXECUTIVE OFFICER/CLERK  
BY MARIBEL MATA Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DIANE V. SANCHEZ, on behalf of herself  
and all others similarly situated,

Plaintiffs,

v.

ALLIANZ LIFE INSURANCE COMPANY  
OF NORTH AMERICA; and DOES 1  
through 100, inclusive,

Defendants.

Case No.: BC594715

ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

**I. BACKGROUND**

Plaintiffs Diane V. Sanchez (Sanchez) and Jules Confino (Confino) brought this action against Allianz Life Insurance Company of North America (Allianz Life or Defendant) for breach of contract and declaratory relief with respect to annuities sold to

1 Plaintiffs by Defendant. Plaintiffs seek to represent a class of annuity holders and  
2 beneficiaries.

3 The initial action was filed September 15, 2015 by Sanchez for breach of  
4 contract, declaratory relief, and violation of the unfair competition law, Bus. & Prof.  
5 Code §17200 (UCL). On February 22, 2018, Sanchez filed a first amended class action  
6 complaint alleging the same causes of action and adding Jules Confino and Doreen  
7 Confino as named plaintiffs. Plaintiff Doreen Confino later withdrew from the action.

8 This is one of several class actions involving annuity products sold by Allianz  
9 Life, including *Mooney v. Allianz Life Insurance Company of North America*, Civil No.  
10 06-545 (ADM/FLN) (D. Minn.) ("*Mooney*"), *Iorio, et al. v. Allianz Life Insurance*  
11 *Company of North America*, U.S.D.C. (S.D. Cal.) Case No. 05- cv-0633 JLS and  
12 *Negrete v. Allianz Life Ins. Co. of No. Am.* (C.D. Cal.) Case Nos. CV 05– 06838 CAS  
13 (MANx), CV 05-8908 CAS (MANx). Plaintiffs' counsel in this action was counsel in  
14 *Iorio*.

15 Plaintiffs' primary allegations related to (1) Allianz Life's use of a formula  
16 referred to as "the expense recovery adjustment" in calculating nonguaranteed  
17 annuitization payments under the annuity contracts and (2) the annuity contracts'  
18 provisions governing full and partial surrender transactions. Plaintiffs allege that, when  
19 an annuitization occurred within ten years after the effective date of issuance of an  
20 annuity, Allianz Life's use of the expense recovery adjustment calculation in its  
21 determination of annuitization payments greater than guaranteed under the annuity  
22 either reduced the annuitization value of the annuity or reduced the annuitization  
23 payments, in alleged violation of contractual promises. Plaintiffs also pursued other  
24 allegations of breach concerning annuitization, including that Allianz Life's calculation  
25 of annuitization payments breached contractual promises concerning "purchase rates."

1 With respect to surrenders and partial surrenders of the annuities, Plaintiffs alleged that  
2 the contractual language in the annuities at issue obscured or did not properly disclose  
3 alleged penalties or other consequences associated with full surrenders or partial  
4 surrenders, including the alleged loss of a bonus that Plaintiffs asserted should have  
5 been included in the cash value of the annuity contracts; that the contracts did not  
6 comply with various provisions of California statutes, including Cal. Civ. Code §§ 1442  
7 and 1671 and Cal. Ins. Code § 10127.13; and that the alleged penalties and surrender  
8 provisions were onerous and constituted forfeitures or impermissible penalties and/or  
9 were unenforceable under other legal doctrines.

10 Allianz Life argued that a defense judgment in *Mooney*, entered after a contested  
11 jury trial, barred Sanchez's claims, as she was a member of that class. On February 28,  
12 2019, following a bifurcated trial, the Court determined that Sanchez's claims for  
13 declaratory relief and violation of the UCL were barred by the judgment in *Mooney* but  
14 that her breach of contract claim was not barred, having arisen after the *Mooney*  
15 judgment was entered.

16 On August 5, 2019, Plaintiffs filed the operative second amended class action  
17 complaint for breach of contract and declaratory relief (for annuities issued after the  
18 *Mooney* judgment) consistent with the Court's rulings.

19 On July 20, 2020, the Court granted Plaintiffs' motion for class certification  
20 certifying the following class:

21 All California owners (or their designated beneficiaries on death claims) of the  
22 following Allianz Life Insurance Company of North America annuities who at  
23 any time from September 15, 2011 to the present either (1) received an annuity  
24 (or death benefit) payment that was calculated with an expense recovery  
25 adjustment, or (2) incurred a surrender penalty or charge in connection with a

1 full or partial surrender: BonusMaxxx, BonusMaxxx Elite, BonusDex,  
2 BonusDex Elite, 10% Bonus PowerDex, and MasterDex 10.

3  
4 All California owners of the following annuities issued by Allianz Life Insurance  
5 Company of North America that are currently in deferral: BonusMaxxx,  
6 BonusMaxxx Elite, BonusDex, BonusDex Elite, 10% Bonus PowerDex, and  
7 MasterDex 10.

8  
9 Excluded from these classes are the annuities that were the subject of the  
10 settlements in *Iorio, et al. v. Allianz Life Insurance Company of North America*,  
11 U.S.D.C. (S.D. Cal.) Case No. 05- cv-0633 JLS and *Negrete v. Allianz Life Ins.*  
12 *Co. of No. Am.* (C.D. Cal.) Case Nos. CV 05– 06838 CAS (MANx), CV 05-8908  
13 CAS (MANx).

14  
15 On October 30, 2020, the appointed settlement administrator, KCC Class Action  
16 Services, LLC (“KCC”), mailed notice to 26,839 Class Members. On January 12, 2021,  
17 KCC mailed notice to an additional 59 Class Members. 37 Class Members have  
18 excluded themselves from the Certified Class.

19 On September 28, 2021, the Parties attended a mediation before mediator Robert  
20 Kaplan, Esq., of Judicate West. The Parties ultimately reached an agreement on the  
21 principal terms of a settlement and finalized the terms in the *Settlement Agreement*  
22 (“Settlement Agreement”), a copy of which is attached to the Declaration of Joshua S.  
23 Davis (“Davis Decl.”) as Exhibit A.

24 Plaintiffs’ motion for preliminary approval of the settlement came on for hearing  
25 on June 30, 2022. For the reasons set forth below, the Court preliminarily grants

1 approval of the settlement, **orders notice to be** given pursuant to a notice to be corrected  
2 as detailed herein, and sets a **fairness hearing and hearing on Plaintiffs'** counsel's  
3 request for attorneys' fees.

## 4 5 **II. THE TERMS OF THE SETTLEMENT**

### 6 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

- 7 • "Certified Class" means the following persons and annuities the Plaintiffs  
8 defined as the Class in their Second Amended Complaint, which the Court  
9 certified pursuant to its July 20, 2020 Order and who did not submit a timely  
10 request to be excluded from the Class (§17.m):
  - 11 ○ All California owners (or their designated beneficiaries on death claims)  
12 of the following Allianz Life Insurance Company of North America  
13 annuities who at any time from September 15, 2011 to the present either  
14 (1) received an annuity (or death benefit) payment that was calculated  
15 with an expense recovery adjustment, or (2) incurred a surrender penalty  
16 or charge in connection with a full or partial surrender: BonusMaxxx,  
17 BonusMaxxx Elite, BonusDex, BonusDex Elite, 10% Bonus PowerDex,  
18 and MasterDex 10.
  - 19 ○ All California owners of the following annuities issued by Allianz Life  
20 Insurance Company of North America that are currently in deferral:  
21 BonusMaxxx, BonusMaxxx Elite, BonusDex, BonusDex Elite, 10%  
22 Bonus PowerDex, and MasterDex 10.
  - 23 ○ Excluded from these classes are the annuities that were the subject of the  
24 settlements in *Iorio, et al. v. Allianz Life Insurance Company of North*  
25 *America*, U.S.D.C. (S.D. Cal.) Case No. 05-cv-0633 JLS and *Negrete v.*

1                    *Allianz Life Ins. Co. of No. Am.* (C.D. Cal.) Case Nos. CV 05-06838  
2                    CAS (MANx), CV 05-8908 CAS (MANx).

- 3                    • "Class Member" means a member of the Certified Class. (§17.p)
- 4                    • "Annuity Status Date" means March 31, 2022 at 11:59 p.m. Central Daylight  
5                    Time. (§17.j)
- 6                    • "Annuitized Settlement Annuity" means (§17.g):
  - 7                    ○ An Annuity as to which the Current Owner(s) elected to annuitize the  
8                    Annuitization Value between September 15, 2011 and the Annuity Status  
9                    Date if such annuitization occurred within 10 years after the Settlement  
10                    Annuity's effective date of issuance. An Annuity in which the Current  
11                    Owner elected to take Annuity Option D, referred to in the Annuity as  
12                    "Benefit Deposited With Interest," is not an Annuitized Settlement  
13                    Annuity under this Agreement because the expense recovery adjustment  
14                    calculation is not incorporated in the payout calculations for Option D.
  - 15                    ○ A Death Benefit election by a Beneficiary that occurred between  
16                    September 15, 2011 and the Annuity Status Date if and to the extent (a)  
17                    the Beneficiary elected to take the Death Benefit as the Annuitization  
18                    Value in equal periodic installments over 5 or more years and (b) such  
19                    election was made within 10 years after the Settlement Annuity's  
20                    effective date of issuance. For purposes of the Agreement, when there  
21                    are multiple Beneficiaries of a Settlement Annuity, such a Death Benefit  
22                    election shall be treated as an Annuitized Settlement Annuity only as to  
23                    the portion of the Death Benefit to which the annuitizing Beneficiary  
24                    was entitled under the Annuity.
- 25                    • "Surrendered Settlement Annuity" means (§17.ww):

- Settlement Annuity that was fully surrendered by the Current Owner(s) for the Cash Value of the Annuity between September 15, 2011 and the Annuity Status Date; or
- a Beneficiary's election to receive the Death Benefit in the form of the Cash Value if that election was made between September 15, 2011 and the Annuity Status Date. For purposes of this Agreement only, when there are multiple Beneficiaries, such an election of a Death Benefit shall be treated as a Surrendered Settlement Annuity only as to the portion of the Death Benefit to which the Beneficiary was entitled under the Settlement Annuity
- "Penalty-Incurring Partial Surrender" means a withdrawal from an Annuity that occurred between September 15, 2011 and the Annuity Status Date that did not meet the requirements of a penalty-free withdrawal under the terms of the Annuities but it does not mean a withdrawal required to be taken as a Required Minimum Distributions under the Internal Revenue Code. (§17.hh)
- "Active Deferred Settlement Annuity" means a Settlement Annuity that, as of the Annuity Status Date, has (a) not been fully surrendered, (b) not been partially or completely Annuitized, and (c) not become eligible for death benefits, except if the Settlement Annuity was continued in effect by the surviving spouse. (§17.b)
- "Owner" means any Person(s) having any legal or equitable ownership interest in a Settlement Annuity, including, where applicable, an annuitant, under the terms of the Settlement Annuity, agreement with Allianz Life, and/or applicable law. Initially, at the time of issuance of a Settlement Annuity, the Settlement Annuity purchaser is the Owner with respect to said Settlement Annuity. The



1 Owner may change upon either the Owner's death or a transfer of ownership to  
2 another, in accordance with the terms of the Settlement Annuity, agreement  
3 with Allianz Life, and/or applicable law. There can be more than one concurrent  
4 Owner of a Settlement Annuity. A Beneficiary has ownership rights only upon  
5 the death of the Owner. Without limiting the foregoing, "Owner" shall include a  
6 surviving spouse and non-spouse Beneficiary who continues a Settlement  
7 Annuity in deferral, if such a continuation was elected and was permitted by the  
8 terms of the Settlement Annuity (or Allianz Life has otherwise agreed to permit  
9 such a continuance). (§17.ee)

- 10 • "Current Owner" and "Current Owners" means the following (§17.u):
  - 11 ○ As to an Active Deferred Settlement Annuity, the person or persons  
12 listed in Allianz Life's corporate records as the Owner(s) of the  
13 Settlement Annuity as of the Annuity Status Date;
  - 14 ○ As to an Annuitized Settlement Annuity described in Paragraph 17.g.i,  
15 the person or persons listed in the Annuity Option Agreement as the  
16 annuitant (or if that annuitant is no longer living on the Annuity Status  
17 Date and the payments under the Annuity Option Agreement have not  
18 terminated as of the Annuity Status Date, the designated beneficiary  
19 under the Annuity Option Agreement);
  - 20 ○ As to a Surrendered Settlement Annuity described in Paragraph 17.ww.i,  
21 the person or persons listed in Allianz Life's business records as the  
22 Owner(s) as of the date of surrender.
- 23 • The "Settlement Class" is defined as follows, subject to the Settlement Class  
24 Exclusions (§17.tt):

- an Owner of an Annuity that, as of the Annuity Status Date, has not (a) been fully surrendered, (b) not been partially or wholly annuitized, (c) and not become eligible for death benefits, except if the Settlement Annuity was continued in effect by a surviving spouse of the Owner;
  - an Owner of an Annuity that was annuitized for the Annuitization Value between September 15, 2011 and the Annuity Status Date if such annuitization occurred within 10 years after the Settlement Annuity's effective date of issuance, unless the annuity option taken was Annuity Option D, referred to as "Benefit Deposited With Interest";
  - an Owner of an Annuity that was fully surrendered for the Cash Value of the Annuity between September 15, 2011 and the Annuity Status Date;
  - a Beneficiary of an Annuity who between September 15, 2011 and the Annuity Status Date elected to receive the Death Benefit either (a) in the form of a lump sum payment of the Cash Value or (b) in the form of equal periodic installments of the Annuitization Value over five or more years if such election was made within 10 years after the Annuity's effective date of issuance; and/or
  - an Owner of an Annuity that at any time from September 15, 2011 to the Annuity Status Date had a Penalty-Incurring Partial Surrender.
- "Settlement Class Exclusions" means the following persons and/or Annuities excluded from the Settlement Class and not eligible for benefits under this Settlement (§17.uu):
    - Annuities that were the subject of the settlements in *Iorio, et al. v. Allianz Life Insurance Company of North America*, U.S.D.C. (S.D. Cal.) Case No. 05-cv-0633 JLS and *Negrete v. Allianz Life Ins. Co. of No. Am.*

(C.D. Cal.) Case Nos. CV 05-06838 CAS (MANx), CV 05- 8908 CAS (MANx);

- Annuities that on the Annuity Status Date do not meet the criteria required for the Owner or Beneficiary to be part of the Class; and
  - any person who, in response to the Class Notice, timely submitted a written request to be excluded from the Class with respect to any Annuity in which that person had an interest.
- "Settlement Class Member" means a member of the Settlement Class but only with respect to an Annuity that is not subject to a Settlement Class Exclusion. (§17.vv)

## B. THE MONETARY TERMS OF SETTLEMENT

The essential monetary terms are as follows:

The Gross Settlement Amount ("GSA") is **\$19,850,000** (§17.bb).

The Net Settlement Amount ("Net") (**\$12,745,981.60**) is the GSA less:

- Up to **\$6,616,666.67** (33 1/3%) for attorney fees (§43);
  - Up to **\$337,351.74** for attorney costs (§44);
  - Up to **\$30,000 total [\$15,000 each]** for service awards to the two proposed class representatives (§46); and
  - Estimated **\$120,000** for settlement administration costs (§59).
- Assuming the Court approves all maximum requested deductions, approximately \$12,745,981.60 will be available for distribution to participating class members. Assuming full participation, the average settlement distribution or credit will be approximately \$493.80. ( $\$12,745,981.60 \text{ Net} \div 25,812 \text{ class members} = \$493.80$ ).
  - There is no Claim Requirement (Notice pg. ii).

- 1 • The settlement is not reversionary (§30)
- 2 • Active Deferred Settlement Annuities Calculation: Any Active Deferred  
3 Settlement Annuity shall be entitled to a credit to the current Cash Value if  
4 within 365 days after the Effective Date of the Settlement Allianz Life receives a  
5 Surrender Form signed by all of the Current Owners of the Settlement Annuity  
6 requesting a full and complete surrender of the Settlement Annuity. The Cash  
7 Value Credit, the calculation of which is described in Paragraph 32, will be  
8 applied on and as of the date that the surrender is processed by Defendant. (§31)
  - 9 ○ The amount of the Cash Value Credit will be equal to (a) .35 multiplied  
10 by (b) the Premium Bonus Percentage or Annuitization Bonus percentage  
11 shown in the Settlement Annuity's Policy Schedule (the maximum of  
12 which was .12) multiplied by (c) the Cash Value as of the effective date  
13 of surrender. (§32)
  - 14 ○ For the purposes of the Agreement, and for purposes of calculating the  
15 Cash Value Credit hereunder, a surrender made pursuant to this provision  
16 shall be deemed effective on the date that a contractually compliant  
17 Surrender Form for a full surrender is processed by Allianz Life in  
18 accordance with Allianz Life's corporate policies (which require  
19 submission of the original Annuity contract or a statement of lost  
20 contract). Settlement Class members will be given fourteen (14) days to  
21 cure any deficiencies in any Surrender Forms that were submitted on or  
22 before the expiration of 365 days after the Effective Date. (§33)
- 23 • Gap Relief for Active Deferred Annuities Surrendered After the Annuity Status  
24 Date: The settlement recognizes that some owners of Active Deferred Annuities  
25 may fully surrender such Annuities after the Annuity Status Date but before they

1 have had an opportunity to review the Class Settlement Notice describing the  
2 benefits available under the Settlement. Defendant has agreed to provide a cash  
3 payment applicable to policies that are surrendered between (i) the day after the  
4 Annuity Status Date and (ii) 35 calendar days after the date of the mailing of the  
5 Class Action Settlement Notice (“the Gap Relief Period”) on the terms and  
6 conditions in Paragraphs 35 and 36. (¶34)

- 7 ○ If the Court enters the Preliminary Approval Order on or before July 31,  
8 2022, a Settlement Class Member who fully surrenders an Active  
9 Deferred Settlement Annuity during the Gap Relief Period will be entitled  
10 to a retroactive application of the Cash Value Credit to such Annuity as  
11 described in Paragraphs 31-33, with checks mailed by Allianz Life within  
12 90 days after the Effective Date of the Settlement. (¶35)
- 13 ○ If the Court enters the Preliminary Approval Order after July 31, 2022,  
14 the cash value credits provided as gap relief will be subject to a  
15 \$400,000.00 aggregate cap. If the aggregate amount of retroactive cash  
16 value credits applicable to Settlement Annuities fully surrendered during  
17 the Gap Period using the calculations described in Paragraph 32 is equal  
18 to or lower than \$400,000.00, the same Cash Value Credit described in  
19 Paragraphs 31-33, will be retroactively applied to each Active Deferred  
20 Settlement Annuity fully surrendered during the Gap Period, with checks  
21 mailed by Allianz Life within 90 days after the Effective Date of the  
22 Settlement. However, if the aggregate amount of retroactive cash value  
23 credits applicable to Settlement Annuities fully surrendered during the  
24 Gap Period using the calculations described in Paragraph 32 is greater  
25 than \$400,000.00, the payment for each Annuity surrendered during the

1 Gap Relief Period shall be reduced proportionally, such that the total  
2 amount paid by Allianz Life with respect to Active Deferred Settlement  
3 Annuities that are fully surrendered during the Gap Relief Period is no  
4 greater than \$400,000.00. (§36)

- 5 • **Uncashed Settlement Payment Checks:** Settlement Checks that are not cashed  
6 within 180 days after mailing of the initial check (or 60 days after mailing of a  
7 replacement check) will be void and a stop payment will be placed on the  
8 Settlement Checks. Settlement Class Members who fail to timely cash their  
9 Settlement Checks will still be bound by the Agreement. (§29) The amounts of  
10 the uncashed Settlement Checks will be sent to the California State Controller's  
11 Office (or other government entity designated under the California's unclaimed  
12 property law statutes). (§30)
- 13 • **Funding of the Settlement:** Within 30 days after the Court's entry of the  
14 Preliminary Approval Order, Defendant shall pay \$120,000.00 of the Gross  
15 Settlement Amount into the Settlement Fund to pay the costs and fees for the  
16 Settlement Administrator to effectuate the Class Action Settlement Notice  
17 mailing and the administration of the Settlement. (§23.) Within 30 days after the  
18 Effective Date, Defendant shall pay by wire transfer the remainder of the Gross  
19 Settlement Amount (the Gross Settlement Amount less the \$120,000.00  
20 Defendant previously paid to the Settlement Administrator) into the Settlement  
21 Fund. (§24.)
- 22 • **Distribution of Settlement:** The Net Settlement Fund will be distributed to  
23 Settlement Class Members according to the proposed Net Settlement Fund  
24 Distribution Plan, to be approved by the Court, which is attached as Exhibit 4 to  
25 the Settlement Agreement. (§25.)

- As set forth in the Plan of Distribution, fifty-four percent (54%) of the Net Settlement Fund will be allocated to relief applicable to Surrendered Settlement Annuities and for Penalty-Incurring Partial Surrenders. Forty-six percent (46%) of the Net Settlement Fund will be allocated to relief applicable to Annuitized Settlement Annuities. (¶26.)
- Within forty (40) days of the Effective Date, the Settlement Administrator shall mail Settlement Checks from the Net Settlement Fund, in accordance with the Distribution Plan of the Net Settlement Fund, as approved by the Court, to the Settlement Class Members. (¶27.)
- Amendments: The Agreement authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, or expansions of the Agreement and all exhibits attached hereto which (a) are consistent with the Judgment, and (b) do not limit the rights of Settlement Class Members and any Person entitled to Settlement Relief under the Agreement. (¶70.j)

### C. TERMS OF RELEASES

- Release by Participating Class Members. The obligations incurred under this Settlement will be in full and final disposition of the Action against Defendant and will fully, finally, and forever compromise, settle, release, resolve, relinquish, waive, and discharge any and all Released Claims against Defendant and its Related Parties. (¶37.) The Class Representatives will have, and each of the Settlement Class Members will be deemed to have, and by operation of law and of the Judgment will have, on behalf of themselves and their Related Parties, fully, finally and forever compromised, settled, released, resolved, relinquished,

1 waived, and discharged the Released Parties from the Released Claims without  
2 costs to any party (except as set forth in this Settlement), except for claims to  
3 enforce the Settlement. (§38.)

4     ○ "Released Claims" means any and all claims, complaints, causes of  
5       action, allegations of liability, damages, restitution, interest, demands or  
6       rights, that reasonably arise out of or relate to the facts, events,  
7       transactions or circumstances that were alleged against Allianz Life in the  
8       Complaint or pursued in the Action, under any legal theory or construct  
9       including a request for declaratory relief. Released Claims includes any  
10      future claims, complaints, causes of action, allegations of liability,  
11      damages, restitution, interest, demands or rights, that that may accrue  
12      upon a surrender or annuitization of an Active Deferred Settlement  
13      Annuity occurring after the Annuity Status Date if they reasonably arise  
14      out of or relate to the facts, events, transactions or circumstances that  
15      were alleged against Allianz Life in the Complaint or pursued in the  
16      Action, under any legal theory or construct, including a request for  
17      declaratory relief. Released Claims include but are not limited to any of  
18      the following subject matters, all of which were alleged and pursued in  
19      the Action (§17.nn):

- 20         ■ The disclosure, nondisclosure or defective disclosure of  
21            information required by the California Insurance Code, including  
22            but not limited to Cal. Ins. Code § 10127.13, relating to surrender  
23            charges or penalties, prior to or in connection with the sale,  
24            issuance, or delivery of a Settlement Annuity.
- 25



- 1           ▪ The amount or disclosure, nondisclosure or defective disclosure, or  
2           calculation of any claimed charge, fee, penalty, or reduction,  
3           including an alleged loss of a bonus, associated with the partial or  
4           full surrender of a Settlement Annuity, or with the election by a  
5           Beneficiary of a Settlement Annuity to take the Death Benefit in  
6           the form of a lump sum payment, including but not limited to  
7           claims based on Cal. Civ. Code §§ 1442 and 1671;
- 8           ▪ The amount or disclosure, nondisclosure or defective disclosure of  
9           any claimed charge, fee, penalty or reduction associated with  
10          Allianz Life's determination or calculation of annuitization  
11          payments in excess of the minimum payments guaranteed under  
12          each Settlement Annuity;
- 13          ▪ Allianz Life's alleged failure to provide, or calculation of, a bonus  
14          credit to the Annuitization Value or Cash Value of the Settlement  
15          Annuity, or the disclosure, nondisclosure or defective disclosure  
16          thereof; and/or
- 17          ▪ Allianz Life's selection, declaration, determination or calculation  
18          of annuitization interest rates or purchase rates in connection with  
19          the annuitization of the Settlement Annuities.
- 20      ○ With respect to the Released Claims (§40):
  - 21          ▪ Nothing shall preclude any action or proceeding to enforce the  
22          terms of the Agreement;
  - 23          ▪ No claims of any nature are released with respect to any annuity,  
24          or other contract or agreement, between the Class Representative  
25          or any Settlement Class Member and Defendant, or its

1 predecessors, successors, or assigns, other than a Settlement  
2 Annuity;

- 3 ■ Class Representatives and the Settlement Class members shall  
4 continue to have all rights under their Settlement Annuity, except  
5 to the extent it is changed or modified by the Settlement and  
6 Agreement.

- 7 ○ The Release is, and may be raised, as a complete defense to and precludes  
8 any claim, action, or proceeding encompassed by the Release against the  
9 Allianz Life Releasees herein. (§42)

- 10 • "Released Parties" means Allianz Life and its Related Parties. (§17.mm)

- 11 ○ "Related Parties" means a party's or Settlement Class Member's current,  
12 former, and future spouses, estates, heirs, assigns, beneficiaries,  
13 executors, administrators, trusts, trustees, predecessors, successors, parent  
14 organizations, subsidiaries, affiliates, partners, joint venturers, officers,  
15 directors, shareholders, employees, members, managers, trustees, agents,  
16 appointed agents, representatives, attorneys, and any persons designated  
17 as annuitants under a Settlement Annuity. (§17.11)

- 18 • The named Plaintiffs will also provide a general release (§39)

- 19 ○ Upon full funding, the Agreement forever discharges the Defendant  
20 Releasees from any claims or liabilities and permanently bars and enjoins  
21 (§70.h):

- 22 ■ Plaintiffs and their Related Parties from filing, commencing,  
23 prosecuting, maintaining, intervening in, participating in,  
24 conducting, or continuing litigation as class members or otherwise,  
25 or from receiving any benefits from any lawsuit, administrative,

1 arbitration, remediation or regulatory proceeding or order, or other  
2 legal proceeding in any jurisdiction, in accordance with the  
3 provisions of Section IV;

- 4 ■ Plaintiffs and their Related Parties, and all persons in active  
5 concert or participation with them, from filing, commencing, or  
6 prosecuting a lawsuit, arbitration, remediation or other legal  
7 proceeding as a class action, a separate class, or group for purposes  
8 of pursuing a putative class action (including by seeking to amend  
9 a pending complaint to include class allegations or by seeking class  
10 certification in a pending action in any jurisdiction) on behalf of  
11 Plaintiffs, arising out of, based on, or relating to the Released  
12 Claims.

- 13 • The releases are effective as of the date that Defendant pays the last portion of  
14 the Gross Settlement Amount into the Settlement Fund. (¶70.h)

#### 16 **D. SETTLEMENT ADMINISTRATION**

- 17 • The proposed Settlement Administrator is KCC Class Action Services, LLC  
18 (¶17.qq), which has provided evidence that no counsel are affiliated with it and  
19 that it has adequate procedures in place to safeguard the data and funds to be  
20 entrusted to it. (See July 20, 2020 Order granting class certification.)
- 21 • Settlement administration costs are estimated to be \$120,000 (¶59).
- 22 • Notice: The manner of giving notice is described below.
- 23 • Opt Out/Objection Dates: Any Settlement Class Member who wishes to be  
24 excluded from the Settlement Class must mail a written request for exclusion to  
25 the Settlement Administrator at the address provided in the Class Action

1 Settlement Notice, postmarked no later than 35 days after the mailing of such  
2 Notice subject to the provisions of Paragraph 52 regarding re-mailed notices, or as  
3 the Court otherwise may direct. (§61) This same deadline applies to objections  
4 (§65) and disputes (§66).

- 5 ○ Any Settlement Class Member who does not file a timely written request  
6 for exclusion, as provided in this Section, shall be bound by all subsequent  
7 proceedings, orders, and judgments in this Action, including, but not  
8 limited to, the Release, even if that Settlement Class Member has litigation  
9 pending or subsequently initiates litigation against Allianz Life with respect  
10 to the Released Claims. (§64)
- 11 ○ Defendant shall have the option to terminate the Agreement if more than  
12 1% of Settlement Class Members exclude themselves from this Settlement  
13 as provided in Section VIII. (§73)
- 14 ● Notice of Final Judgment will be posted on the settlement administrator's website.  
15 (§57.f)

### 17 **III. SETTLEMENT STANDARDS AND PROCEDURE**

18 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise  
19 of an entire class action, or of a cause of action in a class action, or as to a party,  
20 requires the approval of the court after hearing." "Any party to a settlement agreement  
21 may serve and file a written notice of motion for preliminary approval of the settlement.  
22 The settlement agreement and proposed notice to class members must be filed with the  
23 motion, and the proposed order must be lodged with the motion." See Cal. Rules of  
24 Court, rule 3.769(c).  
25

1        “In a class action lawsuit, the court undertakes the responsibility to assess  
2 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or  
3 dismissal of a class action. The purpose of the requirement [of court review] is the  
4 protection of those class members, including the named plaintiffs, whose rights may not  
5 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*  
6 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal  
7 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,  
8 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)  
9 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement  
10 agreement to the extent necessary to reach a reasoned judgment that the agreement is  
11 not the product of fraud or overreaching by, or collusion between, the negotiating  
12 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
13 concerned.”] [internal quotation marks omitted].

14        “The burden is on the proponent of the settlement to show that it is fair and  
15 reasonable. However, “a presumption of fairness exists where: (1) the settlement is  
16 reached through arm's-length bargaining; (2) investigation and discovery are sufficient  
17 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
18 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
19 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 ].

20        Notwithstanding an initial presumption of fairness, “the court should not give  
21 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
22 116, 130 (“*Kullar*”). “To protect the interests of absent class members, the court must  
23 independently and objectively analyze the evidence and circumstances before it in order  
24 to determine whether the settlement is in the best interests of those whose claims will be  
25 extinguished.” *Kullar*, 168 Cal. App. 4<sup>th</sup> at 130. In that determination, the court should

1 consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity  
2 and likely duration of further litigation, the risk of maintaining class action status  
3 through trial, the amount offered in settlement, the extent of discovery completed and  
4 stage of the proceedings, the experience and views of counsel, the presence of a  
5 governmental participant, and the reaction of the class members to the proposed  
6 settlement.” *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to  
7 engage in a balancing and weighing of factors depending on the circumstances of each  
8 case.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at 245.

9 At the same time, “[a] settlement need not obtain 100 percent of the damages  
10 sought in order to be fair and reasonable. Compromise is inherent and necessary in the  
11 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is  
12 substantially narrower than it would be if the suits were to be successfully litigated,’  
13 this is no bar to a class settlement because ‘the public interest may indeed be served by  
14 a voluntary settlement in which each side gives ground in the interest of avoiding  
15 litigation.’” *Id.* at 250.

#### 16 17 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

##### 18 19 **A. THERE IS A PRESUMPTION OF FAIRNESS**

20 The settlement is entitled to a presumption of fairness for the following reasons:

##### 21 22 **1. The settlement was reached through arm’s-length bargaining**

23 On September 28, 2021, the Parties attended a mediation before mediator Robert  
24 Kaplan, Esq., of Judicate West. The Parties ultimately reached an agreement on the  
25 principal terms of a settlement and finalized the terms in the Settlement Agreement.

1 (Davis Decl., ¶ 18.). The Court has handled this matter for several years and has  
2 observed the relationship of counsel to be professional but adversarial at all times.

## 3 4 **2. The investigation and discovery were sufficient**

5 Class Counsel represents that discovery in this case has been extensive. Plaintiffs  
6 served Defendant with multiple sets of production requests, form interrogatories,  
7 special interrogatories and requests for admissions. Plaintiffs also responded to requests  
8 for production, interrogatories and form interrogatories served by Defendant. The  
9 Parties also had discovery disputes, discovery conferences with the Court and motions  
10 to compel by both Plaintiffs and Defendant. (Davis Decl., ¶ 19.)

11 Allianz Life produced more than 40,480 pages of documents, including trial  
12 transcripts from *Mooney*, internal documents regarding the development of the  
13 annuities at issue, the actuarial pricing of the annuities, the setting of interest rates,  
14 written marketing materials and other material provided to policyholders. Allianz Life  
15 also produced data on all policyholders' annuities at issue, including annuitization and  
16 surrender data, which needed to be reviewed and analyzed by insurance actuaries.  
17 (Davis Decl., ¶ 20.)

18 In addition to written discovery, the parties took eight depositions. These  
19 included: (1) Karl Cambronne, the lead attorney for the class in *Mooney*, regarding the  
20 agreement he entered into with Allianz Life, under which the *Mooney* plaintiffs agreed  
21 not appeal in exchange for Allianz Life's agreement to waive costs, and whether the  
22 parties disclosed the agreement to the Court in *Mooney* or sought approval for their  
23 post-judgment settlement.; (2) Sarah Ahmad, Allianz Life's PMQ on its costs incurred  
24 in *Mooney*; (3) Melanie Christensen, an actuary for Allianz Life, who testified as  
25 Allianz Life's Person Most knowledgeable (PMQ) on the annuities at issue, and the

1 calculation of Sanchez's annuity payments and surrender penalties on Sanchez's partial  
2 surrenders; (4) Justin Hanson, Allianz Life's Senior Director of IT Application  
3 Development, who testified as Allianz Life's PMQ on (a) Allianz Life's available data  
4 regarding the policy's owners annuities, (b) when the ERA was applied to annuitization  
5 payment and (c) the process for applying the ERA to annuitization payments; (5)  
6 Douglas Ferderer, Allianz Life's Director of Finance in Enterprise Business  
7 Intelligence, who testified as Allianz Life's PMQ on the annuitization and surrender  
8 data produced by Allianz Life; and (6) Jesse Kling, the Assistant Vice President –  
9 Actuary at Allianz Life, who testified as Allianz Life's PMQ on (a) the process for  
10 declaring purchase rates and how they are derived, (b) the selection of annuitization  
11 rates at the rate committee meetings, (c) the development and reasons for the ERA, (d)  
12 creation and use of Allianz Life's product overviews; (e) statements made to Class  
13 Members regarding the ERA, if any, (f) the application of any surrender penalties to  
14 Mr. Confino, (g) the process under which Allianz Life calculated surrender penalties  
15 and the extent of those penalties, and (h) Allianz Life's use of pricing memoranda.  
16 (Davis Decl., ¶ 21.)

17 In addition, Class Counsel reviewed and utilized the discovery, including  
18 deposition transcripts, from *Iorio*. These included depositions of Charles Fields, Allianz  
19 Life's Manager of Business Support, Neil McKay, Allianz Life's chief actuary, Diane  
20 Gates, an Allianz Life Actuary in its investment department, and Renee West, Allianz  
21 Life's former head of its product department. (Davis Decl., ¶ 22.)

22 Allianz Life took the depositions of the class representatives, Diane V. Sanchez  
23 and Jules Confino. (Davis Decl., ¶ 23.)

24 In preparation for trial in this matter and to prepare for the mediation, Class  
25 Counsel consulted expert Terry Long, an insurance actuary at the actuarial firm Lewis



1 & Ellis, Inc, who independently analyzed annuitization and surrender data for every  
2 Class Member to determine potential damages in this case for all Settlement Class  
3 Members and the proposed Settlement Class as a whole. As part of this analysis, Mr.  
4 Long calculated for every annuitization any ERA damage for that Annuity. He also did  
5 calculations to determine the loss of bonus on every full or partial surrender. The  
6 declaration of Long was concurrently filed with this motion for preliminary approval.  
7 (Davis Decl., ¶ 24; Declaration of Terry M. Long, *passim*.)

### 8 9 **3. Counsel is experienced in similar litigation**

10 Class Counsel are experienced in class action litigation, including litigation  
11 involving insurance products and annuities in particular. (Davis Decl. ¶¶2-3; See also  
12 July 20, 2020 Order granting class certification.)

### 13 14 **4. Percentage of the class objecting**

15 This cannot be determined until the final fairness hearing. Weil & Brown et al.,  
16 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should  
17 the court receive objections to the proposed settlement, it will consider and either sustain  
18 or overrule them at the fairness hearing.”].

## 19 20 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 21 **FAIR, ADEQUATE, AND REASONABLE** 22

23 Notwithstanding a presumption of fairness, the settlement must be evaluated in its  
24 entirety. The evaluation of any settlement requires factoring unknowns. “As the court  
25 does when it approves a settlement as in good faith under Code of Civil Procedure

1 section 877.6, the court must at least satisfy itself that the class settlement is within the  
2 'ballpark' of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)  
3 38 Cal.3d 488, 499–500. While the court is not to try the case, it is 'called upon to  
4 consider and weigh the nature of the claim, the possible defenses, the situation of the  
5 parties, and *the exercise of business judgment* in determining whether the proposed  
6 settlement is reasonable.' (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.  
7 462, italics added.)" *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

### 8 9 **1. Amount Offered in Settlement**

10 The most important factor is the strength of the case for plaintiffs on the merits,  
11 balanced against the amount offered in settlement." (*Id.* at 130.)

12 Class Counsel's expert estimated Defendant's maximum exposure at \$35,370,491,  
13 based on the following analysis:

Breach	Maximum Exposure
Annuitized Annuities	\$12,144,078
Fully Surrendered Annuities	\$19,795,909
Partially Surrendered Annuities	\$3,430,504
<b>Total</b>	<b>\$35,370,491</b>

19 (Long Decl. ¶¶10-13)

20 Class Counsel obtained a gross settlement valued at \$19,850,000. This is 56% of  
21 Defendant's calculated maximum exposure.

22 The proposed settlement distinguishes between class members based on their  
23 status (those in deferral and those who have annuitized), properly sets a date certain for  
24 determining that status, and attempts to allocate the settlement funds consistent with the  
25 evidence of actual damages, as more fully explained on the record at hearing. (See Long

1 Dec. ¶26; Davis Dec. ¶¶ 29, 36). The settlement was negotiated and endorsed by Class  
2 Counsel who, as indicated above, are experienced in class action litigation involving this  
3 type of annuity product. Based upon their investigation and analysis, the attorneys  
4 representing Plaintiffs and the class are of the opinion that this settlement is fair,  
5 reasonable, and adequate. (Davis Decl. ¶6.)

## 6 7 **2. The Risks of Future Litigation**

8 The case is likely to be expensive and lengthy to try. Although a class was  
9 certified, there is always some risk of decertification. *Weinstat v. Dentsply Intern., Inc.*  
10 (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts  
11 should retain some flexibility in conducting class actions, which means, under suitable  
12 circumstances, entertaining successive motions on certification if the court subsequently  
13 discovers that the propriety of a class action is not appropriate.”].) Moreover, as is  
14 evident from the verdict in *Mooney*, there is no guarantee that Plaintiffs will prevail in  
15 this case and any judgment would be subject to an appeal. Resolution now thus benefits  
16 the Class.

## 17 18 **3. The Releases Are Limited**

19 The Court has reviewed the Releases to be given by the absent class members and  
20 the named plaintiffs. The releases, described above, are tailored to the pleadings and  
21 release only those claims in the pleadings. There is no general release by the absent  
22 class. The named plaintiffs’ general releases are appropriate given that each was  
23 represented by counsel in its negotiation.

24 //

25 //

1                   **4. Conclusion**

2           Class Counsel estimated Defendant's maximum exposure at \$35,370,491. Class  
3   Counsel obtained a gross settlement valued at \$19,850,000. This is approximately 56%  
4   of Defendant's maximum exposure, which, given the uncertain outcomes, including that  
5   liability is a contested issue, and that much lies between now and a judgment affirmed on  
6   appeal, the settlement is within the "ballpark of reasonableness."

7  
8                   **C. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS**  
9                   **OF DUE PROCESS**

10          The purpose of notice is to provide due process to absent class members. A practical  
11   approach is required, in which the circumstances of the case determine what forms of  
12   notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California  
13   Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the  
14   court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the  
15   stake of the individual class members; (4) the cost of notifying class members; (5) the  
16   resources of the parties; (6) the possible prejudice to class members who do not receive  
17   notice; and (7) the res judicata effect on class members.

18                   **1. Method of class notice**

19          Within fourteen (14) days of execution of the Agreement, Class Counsel shall  
20   make a reasonable and diligent effort to provide to Allianz Life a list of Settlement  
21   Class Members entitled to distributions from the Net Settlement Fund, and the amount  
22   of the distributions using the data provided by Allianz Life in this Action. Within  
23   fourteen (14) days of receipt of this information, Allianz Life shall make a reasonable  
24   and diligent effort to provide the Settlement Administrator with an updated list of  
25   Settlement Class Members so that it includes the: (i) name of the Settlement Class

1 Member; (ii) actual policy number of the Settlement Class Member's Settlement  
2 Annuity; and (iii) the last known addresses of the Settlement Class Members (the  
3 "Settlement Class Mailing List"). (§49)

4 No later than 30 days after entry of the Preliminary Approval Order, the  
5 Settlement Administrator will send the Class Action Settlement Notice to each  
6 Settlement Class Member. The Class Action Settlement Notice shall be mailed first-  
7 class mail, postage prepaid, to the last-known address using the Settlement Class  
8 Mailing List. (§51)

9 Settlement Class Members who received re-mailed notices will be given 35 days  
10 from the date of re-mailing to submit requests for exclusion, objections to the  
11 Settlement, and statements of dispute, except that if the Settlement Administrator  
12 receives a notice of returned mail for a Settlement Class Member less than 55 days  
13 before the Final Approval Hearing, the deadline for that Class Member's request for  
14 exclusion, objection to the Settlement, and written statement of dispute shall be 20 days  
15 before the Final Approval Hearing. (§52)

## 16 **2. Content of class notice.**

17 A copy of the proposed class notice is attached to the Settlement Agreement as  
18 Exhibit 1. The notice includes information such as: a summary of the litigation; the  
19 nature of the settlement; the terms of the settlement agreement; the maximum  
20 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,  
21 the enhancement award, and claims administration costs); the procedures and deadlines  
22 for participating in, opting out of, or objecting to, the settlement; the consequences of  
23 participating in, opting out of, or objecting to, the settlement; and the date, time, and  
24 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be  
25 given in English.

1 At hearing it was agreed that the Notice would also include a bold faced  
2 reminder to keep the settlement administrator advised of changes of address and would  
3 include the full release language.

### 4 **3. Settlement Administration Costs**

5 Settlement administration costs are estimated at **\$120,000**, including the cost of  
6 notice (§59). Prior to the time of the final fairness hearing, the settlement administrator  
7 must submit a declaration attesting to the total costs incurred and anticipated to be  
8 incurred to finalize the settlement for approval by the Court.

### 10 **D. ATTORNEY FEES AND COSTS**

11 California Rule of Court, rule 3.769(b) states: “Any agreement, express or  
12 implied, that has been entered into with respect to the payment of attorney fees or the  
13 submission of an application for the approval of attorney fees must be set forth in full in  
14 any application for approval of the dismissal or settlement of an action that has been  
15 certified as a class action.”

16 Ultimately, the award of attorney fees is made by the court at the fairness  
17 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*  
18 *v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*  
19 (2000) 82 Cal.App.4<sup>th</sup> 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4<sup>th</sup> 1122,  
20 1132-1136. In common fund cases, the court may use the percentage method. If  
21 sufficient information is provided a cross-check against the lodestar may be conducted.  
22 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 503. Despite any  
23 agreement by the parties to the contrary, “the court ha[s] an independent right and  
24 responsibility to review the attorney fee provision of the settlement agreement and  
25

1 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*  
2 *Telephone Company* (2004) 118 Cal.App.4<sup>th</sup> 123, 128.

3 The question of class counsel’s entitlement to **\$6,616,666.67** (33 1/3%) in  
4 attorney fees will be addressed at the final fairness hearing when class counsel brings a  
5 noticed motion for attorney fees. If a lodestar analysis is requested class counsel must  
6 provide the court with current market tested hourly rate information and billing  
7 information so that it can properly apply the lodestar method and must indicate what  
8 multiplier (if applicable) is being sought.

9 Counsel shall provide evidence that the fee split between counsel was approved  
10 by the clints.

11 Class counsel should also be prepared to justify the costs sought (capped at  
12 **\$337,351.74**) by detailing how they were incurred.

#### 13 14 **F. SERVICE AWARDS**

15 The Settlement Agreement provides for a service award of up to **\$15,000 each**  
16 for the two class representatives. Trial courts should not sanction enhancement awards  
17 of thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’  
18 hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity,  
19 in the form of quantification of time and effort expended on the litigation, and in the  
20 form of reasoned explanation of financial or other risks incurred by the named  
21 plaintiffs, is required in order for the trial court to conclude that an enhancement was  
22 ‘necessary to induce [the named plaintiff] to participate in the suit . . . .’” *Clark v.*  
23 *American Residential Services LLC* (2009) 175 Cal.App.4<sup>th</sup> 785, 806-807, italics and  
24 ellipsis in original.

1 In connection with the final fairness hearing, the named Plaintiffs must submit a  
2 declaration attesting to why they should be compensated for the expense or risk they  
3 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

4 The Court will decide the issue of the enhancement award at the time of final  
5 approval.

6  
7 **V. CONCLUSION AND ORDER**

8 Contingent upon the Notice being amended to include a reminder regarding  
9 changes of address and including the full release language, the Court hereby:

10 (1) Grants preliminary approval of the settlement as fair, adequate, and  
11 reasonable;

12 (2) Appoints Diane V. Sanchez and Jules Confino as Class Representatives;

13 (3) Appoints Gianelli & Morris and the Law Offices of Ronald A. Marron as  
14 Class Counsel;

15 (4) Appoints KCC Class Action Services as Settlement Administrator;

16 (5) Approves the proposed notice plan; and

17 (6) Approves the proposed schedule of settlement proceedings as follows:

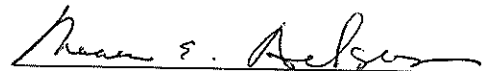
- 18 • Preliminary approval hearing: June 30, 2022
  - 19 • Deadline for Defendant to provide class list to settlement administrator: June 14,  
20 2022 (within 14 days of executing the Settlement Agreement)
  - 21 • Deadline for settlement administrator to mail notices: August 8, 2022 (within 30  
22 days after preliminary approval)
  - 23 • Deadline for class members to opt out: September 12, 2022 (35 days from the  
24 initial mailing of the Notice Packets)
- 25



- Deadline for class members to object: September 12, 2022 (35 days from the initial mailing of the Notice Packets)
- Deadline for class counsel to file motion for final approval: October 19, 2022 (16 court days prior to final fairness hearing)
- Final fairness hearing: November 9, 2022, at 10:00 a.m.

Counsel are reminded that failure to comply with the contingencies may result in denial of final approval.

Dated: 7/8/2022



MAREN E. NELSON

Judge of the Superior Court